

**REDACTED DECISION -- 06-754 W -- BY ROBERT W. KIEFER, JR., ALJ --  
SUBMITTED for DECISION on JUNE 28, 2007 -- ISSUED on JUNE 29, 2007**

**SYNOPSIS**

**PERSONAL INCOME WITHHOLDING TAX -- TAXPAYERS' FAILURE TO CARRY BURDEN OF PROOF** -- The failure of taxpayers to articulate adequate grounds in their petition for reassessment justifying their claim, combined with their failure to appear at a hearing and to present any evidence respecting their claim, will result in a denial of relief to the taxpayer. *See* W. Va. Code § 11-10A-10(e) [2002]; W. Va. Code. St. R. §§ 121-1-63.1 and 69.2 (Apr. 20, 2003).

**FINAL DECISION**

On December 15, 2006, the Unit Manager of the Accounts Monitoring Unit of the Internal Auditing "Division" of the West Virginia State Tax Commissioner's Office ("the Commissioner" or "the Respondent") issued an assessment for personal income withholding tax against the Petitioner. This assessment was issued pursuant to the authorization of the State Tax Commissioner, under the provisions of Chapter 11, Articles 10 and 21 of the West Virginia Code. The assessment was for the periods ending September 30, 2005 and December 31, 2005, for tax in the amount of \$, interest in the amount of \$, computed through December 31, 2005, and additions to tax in the amount of \$, for a total assessed personal income withholding tax liability of \$. Written notice of this assessment was served on the Petitioner.

Thereafter, by mail postmarked December 20, 2006, received in the offices of this tribunal, the West Virginia Office of Tax Appeals, on December 21, 2006, the Petitioner timely filed a petition for reassessment. W. Va. Code §§ 11-10A-8(1) [2002] and 11-10A-9(a)-(b) [2005].

Thereafter, by letter dated May 23, 2007, this Office advised the Petitioner that the evidentiary hearing in this matter was scheduled for June 28, 2007, at 11:30 a.m., E.D.T. This

notice of the evidentiary hearing was served upon the Petitioner on June 11, 2007, as evidenced by United States Postal Service Form PS 3811, August 2001, Domestic Return Receipt (the “Green Card”) signed for by a certain person.

At the time scheduled for convening the evidentiary hearing, there was no appearance on behalf of the Petitioner. The evidentiary hearing was held, however, without an appearance on behalf of the Petitioner, in accordance with the provisions of W. Va. Code § 11-10A-10(a) [2002] and W. Va. Code. St. R. § 121-1-69.1 (Apr. 20, 2003).

### **FINDINGS OF FACT**

1. In its petition for reassessment, the Petitioner asserted that it did not withhold any tax from the pay of employees, and that it had submitted coupons to the State evidencing this fact.

2. The Petitioner was provided with notice that it was required to appear at the evidentiary hearing and present evidence respecting the reasons it believed that the assessment was erroneous, unlawful, void, or otherwise invalid.

3. The grounds articulated by the Petitioner, if supported by proper evidence, are adequate to show that the assessment is erroneous, unlawful, void, or otherwise invalid.

4. However, the Petitioner did not appear at the time and place of the hearing and presented no evidence respecting any of its allegations.

### **CONCLUSIONS OF LAW**

Based upon all of the above it is **DETERMINED** that:

1. In a hearing before the West Virginia Office of Tax Appeals on a petition for reassessment, the burden of proof is upon the petitioner to show that any assessment of tax

against it is erroneous, unlawful, void, or otherwise invalid. *See* W. Va. Code § 11-10A-10(e) [2002]; W. Va. Code. St. R. §§ 121-1-63.1 and 69.2 (Apr. 20, 2003).

2. The Petitioner in this matter has failed to carry its burden of proving that any assessment of taxes against it is erroneous, unlawful, void, or otherwise invalid.

### **DISPOSITION**

**WHEREFORE**, it is the **FINAL DECISION** of the **WEST VIRGINIA OFFICE OF TAX APPEALS** that the personal income withholding tax assessment issued against the Petitioner for the periods ending September 30, 2005 and December 31, 2005, for tax in the amount of \$, interest in the amount of \$, computed through December 31, 2005, and additions to tax in the amount of \$, for a total assessed tax liability of \$, should be and is hereby **AFFIRMED**.

**Interest continues to accrue** on this unpaid tax until this liability is fully paid, pursuant to the provisions of W. Va. Code § 11-10-17(a) [2002].